CASE LIST

Judge Alito, the cases we've discussed are only the tip of the iceberg. You've repeatedly and consistently found that a person whose rights were violated should not be able to prevail against a powerful interest, even where the defendant's conduct is deeply disturbing:

- In *Rouse v. Plantier* (1999) (majority), a group of diabetic inmates sued prison officials for being "deliberately indifferent" to their need for insulin. In response, the prison officials blamed the inmates for their poor health. The trial court held that there was a legitimate factual question whether the inmates' constitutional rights had been violated. You disagreed. Rather than allow the jury to decide the issue, you required a complicated individual-by-individual analysis. You made it much more difficult for the plaintiffs to reach a jury and prevail.

- In *Keller v. Orix Credit Alliance, Inc.* (1997) (majority), you kept a meritorious case from a jury. The plaintiff claimed that he was denied a promotion and fired due to his age. His former boss told him: "If you are getting too old for the job, maybe you should hire one or two young bankers." That sure sounds like age discrimination. But you held that the statement, by itself, was insufficient. You concluded that the issue should *not* go to the jury. Three of your colleagues dissented.

- In *Kleinknecht v. Gettysburg College* (1993) (dissent), a twenty-year-old lacrosse player suffered a heart attack during warm-up drills. It took an hour for an ambulance to arrive, and the boy was declared dead forty-three minutes later at the hospital. The boy's parents sued Gettysburg College. Your colleagues held that the College owed the dead boy a duty to respond swiftly to his medical emergency and that the jury should decide whether it breached that duty. You dissented and argued that the facts were insufficient to establish that Gettysburg College breached its duty of care.

- In *Chittister v. Department of Community & Econ. Dev.* (2000) (majority), a former state employee sued a Pennsylvania department—under the Family & Medical Leave Act—for firing him while he was on approved, paid sick leave. The plaintiff went to trial and won a jury verdict. The trial court, however, overturned the verdict, and you affirmed the decision. You held that the statute was unconstitutional because it created "a substantive entitlement to sick leave." And the view of the Commerce Clause you expressed in the case was later rejected by the Supreme Court.

- In *Clowes v. Allegheny Valley Hosp.* (1993) (majority), a 59-year-old nurse claimed that her employer had constructively discharged her based on her age. The plaintiff won a verdict. Nonetheless, you vacated that victory because the plaintiff did not allege "many of the factors commonly cited by employees who claim to have been constructively discharged." You stated that "unfair and unwarranted treatment is by no means the same as constructive discharge." So, in your view, the evidence was enough to show unfair treatment but not enough to support the verdict.

- In *Charpentier v. Godsil* (1991) (majority), the plaintiff suffered from bipolar manic-depressive psychosis. While in police custody, he began to cry hysterically and beat the

walls and doors of his cell. Eventually, a nurse contacted the facility's physician, who prescribed a tranquilizer. Instead of going to the facility, the doctor stayed home. Two guards entered the cell and beat the man, who sued the physician for malpractice. The jury agreed and awarded damages. You reversed under a defense the doctor never raised. So you raised his defense for him and then ruled in his favor.